

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2049 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SALIM @ TOTADO MAHMMADBHAI @ KADARBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR PREMAL R JOSHI for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 2nd December, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of 'public order' within the meaning of Section 3 (4) of the Act. Four offences punishable under the Bombay Prohibition Act have been registered against the petitioner, and are pending investigation. In each of the said cases, the petitioner was found to be in possession of a sizeable quantity of country liquor. Besides, two persons have given statements in respect of the nefarious activities of the petitioner which have an adverse effect on public order.

4. The impugned order of detention has been challenged on several grounds. However, the one that appeals is in respect of the reports of the chemical analysis of the liquor allegedly recovered from the possession of the petitioner. It is contended that the reports of the chemical analysis are vital documents and under his representation dated 7th January, 1999, the petitioner had requested the detaining authority to supply the same. However, the request has not been acceded to by the detaining authority. It is not disputed that the reports of the chemical examination are vital documents and ought to have been taken into consideration by the detaining authority for recording his subjective satisfaction. It is not the case of the respondents that such reports were not available on the date of the order. The subjective satisfaction recorded by the detaining authority without considering these vital documents is, therefore, vitiated. The petitioner also is deprived of his constitutional right of making an effective representation. The continued detention of the petitioner is, therefore, illegal and invalid.

5. The petition is, therefore, allowed. The order dated 23rd November, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*